

IN THE COURT OF APPEAL

BETWEEN:

HER MAJESTY THE QUEEN,

APPELLANT,

- and -

GRAHAM MICHAEL JAMES,

**(ACCUSED),
RESPONDENT.**

**NOTICE OF APPLICATION FOR LEAVE TO APPEAL AND
NOTICE OF APPEAL**

**MANITOBA JUSTICE
PROSECUTION SERVICE
510 - 405 BROADWAY
WINNIPEG, MB R3C 3L6
(204-945-2852)**

IN THE COURT OF APPEAL

IN THE MATTER OF: GRAHAM MICHAEL JAMES [D.O.B. 07/02/53], who plead guilty on the 7th day of December, 2011 before Judge Harvie at the Provincial Court in Winnipeg, Manitoba, to the following charges:

In regard to Provincial Court Information # 009-75008:

Count 2: that Graham Michael JAMES (B: 1953-02-07) of No Fixed Address, between the 1st day of May, 1989 and the 30th day of April 1994 at or near Swift Current in the Province of Saskatchewan did repeatedly commit a sexual assault on Todd HOLT contrary to Section 271 of the Criminal Code of Canada.

and in regard to Provincial Court Information #011-26487:

Count 1: that GRAHAM MICHAEL JAMES between the 1st day of September in the year 1983 and the 31st day of August in the year 1984 at or near the City of Winnipeg in the Province of Manitoba and elsewhere in the Province of Saskatchewan did repeatedly sexually assault THEOREN WALLACE FLEURY contrary to Section 246.1 of the Criminal Code of Canada.

and was sentenced on the 20th day of March, 2012 before Judge Carlson at the Provincial Court of Manitoba in Winnipeg to a sentence of two years custody concurrent on both charges, a mandatory 10 year firearms prohibition order, a lifetime Section 161(1)(b) Order, a mandatory DNA Order, a Section 743.21(1) Non-Communication Order regarding Theoren Fleury, John Greg Gilhooly and Todd Holt and a 20 year SOIRA Order.

Last known address of the accused: Stony Mountain Institution, Stony Mountain, Manitoba

Notice of Application for Leave to Appeal and Notice of Appeal

The Attorney General for the Province of Manitoba applies for leave to appeal and appeals to the Court of Appeal against the sentence of the accused on the following grounds:

1. The Learned Sentencing Judge erred in the approach taken in sentencing the Respondent.
2. The Learned Sentencing Judge erred in assessing the totality principle.
3. The Learned Sentencing Judge erred by over emphasizing the significance of prior sentences for similar offences.
4. And such further grounds as counsel may advise and this Honourable Court permit.

The Court will be asked to impose a fit sentence.

The address for service of the Attorney General is: Manitoba Justice, Prosecution Service, 510- 405 Broadway, Winnipeg, R3C 3L6.

WAS ORAL EVIDENCE TENDERED AT TRIAL?

☐ YES

☒ NO

HAS A TRANSCRIPT OF ALL RELEVANT EVIDENCE FROM THE
TRIAL BEEN ORDERED FROM TRANSCRIPTION SERVICES:

☒ YES

☐ NO

DATED this 12th day of April, 2012.



MICHAEL MAHON,
Assistant Deputy Attorney General

To: The Registrar of The Court of Appeal
Law Courts Building
100E-408 York Avenue
Winnipeg, MB R3C 0P9

And to: Graham Michael James
c/o Stony Mountain Institution
Stony Mountain, MB

And to: Evan Roitenberg
Gindin Wolson Simmonds Roitenberg
Barristers and Solicitors
1200 – 363 Broadway
Winnipeg, MB R3C 3N9

IN THE COURT OF APPEAL
RULE 112

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Registrar
Manitoba Court of Appeal
Room 100E Law Courts Building
408 York Avenue
Winnipeg, MB R3C 0P9

COUR D'APPEL
RÈGLE 112

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Registraire
Cour d'appel du Manitoba
Palais de justice
408, avenue York, pièce 100E
Winnipeg, MB
R3C 0P9